Articles

UDC 005.21:334.72.021
10.5937/TokOsig2502273J

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CORPORATE GOVERNANCE IN INSURANCE COMPANIES

SCIENTIFIC PAPER

Summary

Corporate governance is the part of company law that governs the management and control of a company. In recent years, especially after the financial crisis, corporate governance has become particularly important in financial institutions, including insurance companies, and special rules of governance and control are increasingly applied to them. Serbian law has developed special rules on corporate governance in insurance companies under the strong influence of European regulations and numerous sources of soft law that recommend responsible and sustainable governance in insurance companies and strive to, in addition to achieving the classic goals of protecting the interests of the company, especially encourage the protection of the interests of users of insurance services and other stakeholders.

One of the most important aspects of corporate governance in insurance companies is the principles by which they conduct their business and act in the interests of the company and its shareholders, in order to protect the interests of users of insurance services. The rules governing the structure and composition of the governing bodies of insurance companies have been specifically regulated and improved in recent years. Under the influence of EU law, a complex management system has been developed in these companies, aimed at careful and conscientious management of the company's affairs. The key features of an effective management system are an adequate and transparent organisational structure with strict demarcation and division of responsibilities and an efficient information transmission system.

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Paper received: 18.3.2025.
Paper accepted:: 10.4.2025.

In recent years, the prevailing view has been that the duty to act in the best interests of the insurer includes principles and standards of environmentally and socially responsible business. This means that, more than ever, the management is faced with the difficult task of implementing increasingly complex business rules and management systems. For this reason, it is necessary to further improve them and to specify the conditions that members of the management of companies in the financial sector must fulfil in order to have sufficient knowledge and skills to understand and manage the risks of sustainable business.

Keywords: Corporate governance – Insurance companies – Duty of diligence – Duty to act in the best interest of the company – Sustainable business

I INTRODUCTION

Corporate governance represents a significant part of company law, focusing specifically on the relationship between a company and its management. It is most commonly defined as the system by which companies are directed and controlled.[2] It is a significant element of the general theory of corporate law, which in recent years has notably influenced the development of more modern, efficient, and sustainable frameworks for corporate regulation and governance, both domestically and in comparative law.

The field of corporate governance is regulated to a considerable extent by statutory provisions, both of a general nature – applicable to all companies, and by specific regulations. These specific rules typically pertain to certain types of companies (e.g. joint-stock companies), companies with particular characteristics (e.g. public companies), or companies engaged in specific activities (such as banking or insurance). The insurance sector is one of those areas within specific company law where the development, modernization, and enhancement of numerous and complex corporate governance rules are especially prominent. As a result, insurance companies, along with other entities within the financial sector, receive significant attention regarding the regulation of their organization, activities, governance, and oversight.

This paper aims to present the fundamental rules and principles of corporate governance in the insurance sector. Primarily, it focuses on current rules and principles applicable in the Republic of Serbia. However, as permitted by the scope

[2] This definition was provided by the Committee chaired by A. Cadbury in the Report on the Financial Aspects of Corporate Governance from 1992, one of the most influential documents regulating corporate governance in business entities. Under its influence, numerous corporate governance codes have been developed around the world. Committee on the Financial Aspects of Corporate Governance, *Report of the Committee on the Financial Aspects of Corporate Governance*, December 1992, available at: *https://www.ecgi.global/sites/default/files/codes/documents/cadbury.pdf*, accessed August 31, 2024, par. 2.5. The report is commonly referred to as the *Cadbury Report* or the *Cadbury Committee Report*, 2.5.

and purpose of this paper, these will also be examined within a broader theoretical and regulatory context. In recent years, growing attention has been paid not only to quality and modern governance but, above all, to sustainable management. This provides an appropriate opportunity to examine such aspects within the framework of insurance company governance. It is widely acknowledged that, alongside public joint-stock companies, financial sector entities are among the best positioned to contribute to the advancement and implementation of ESG principles and standards, to support long-term business goals, and to enhance overall corporate governance.[3]

II CORPORATE GOVERNANCE IN BUSINESS ENTITIES

Traditionally, the area of corporate governance encompasses both internal and external aspects of management and oversight within a company.[4] While the internal corporate governance addresses the internal organization of the company and management through its governing bodies, the external corporate governance is defined as the set of influences on the company, especially its management (for example, in the case of acquisitions). External influence is not as prominent in companies engaged in financial activities, therefore, it is less relevant for insurance companies.[5] The most important set of corporate governance issues concerning insurance companies, as well as other companies in the financial sector, revolves around management and oversight by expert and independent bodies. The essence of corporate governance rules, therefore, regulates the role, powers, and responsibilities of the company's bodies, as well as the rights, obligations, and special duties of individuals and the supervision exercised over them.[6]

Among the key issues that are part of the corporate governance rules and principles, the most prominent include decision-making, adherence to established standards, and fulfilling duties toward the company. The rights and obligations of specific individuals to manage the company necessitate regulating their relationship

[3] Michele Siri, Shanshan Zhu, *Integrating Sustainability in EU Corporate Governance Codes, Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets*, (eds. Danny Busch, Guido Ferrarini, Seraina Grünewald), 2nd edn, Palgrave Macmillan, Cham, 2024, 211–212.

[4] Klaus J. Hopt, *Corporate Governance of Banks and Financial Institutions: Economic Theory, Supervisory Practice, Evidence, and Policy, European Business Organization Law Review*, Vol. 22, No. 1/2021, 14. In our literature, see Mirko S. Vasiljević, *Corporate Governance: Selected Topics*, The Association of Business Lawyers of the Republic of Serbia, Belgrade, 2013, 27.

[5] Hopt notes that this is due in part to the lack of a developed European market for acquiring control over companies in the financial sector (K. J. Hopt, 14); however, the existence of strict regulatory requirements and supervisory oversight concerning the acquisition of ownership interests and the conditions for appointing members of the management board in such companies is equally significant.

[6] Arthur van den Hurk, Michele Siri, *Comparative Regulation of Corporate Governance in the Insurance Sector*, Governance of Financial Institutions (eds. Danny Busch, Guido Ferrarini, Gerard van Solinge), Oxford University Press, Oxford, 2019, 44.

with the company, as well as with other stakeholders: its shareholders, creditors, and employees. Among the classic corporate governance issues are the number and types of governing bodies in the company, their composition and authority, and the interrelations between those bodies. There is ongoing debate about the advantages and challenges of centralized versus decentralized governance, enhanced internal oversight, and strengthening the role of independent individuals. Special emphasis is placed on the appointment, dismissal, and supervision of directors and other members of the management body within the company. Modern corporate governance rules and principles pay particular attention to regulating the rights, obligations, and duties of these individuals.

In recent years, an important topic of corporate governance has become gender equality within a company's governing bodies, as well as corporate governance that takes into account managing environmental, climate, social, and other risks. In addition to these, corporate governance also specifically addresses various conflict-of-interest situations among management members and other stakeholders in the company. Among these, legal theory, legislation, and practice devote the greatest attention to the compensation received by management members, as well as to various specific conflict-of-interest situations, such as those within corporate groups, during insolvency, or in the case of acquisitions.

Although, at first glance, corporate governance in all companies faces the same issues, at least in public joint-stock companies, it has become clear over the years that distinct risks exist in the financial sector. Since the financial crisis in the early 2000s, it has been clear that financial services companies face unique challenges. Poor management of these companies can lead to severe systemic consequences, which necessitates particular attention in the careful design of corporate governance that suits the needs of these companies. Therefore, corporate governance has become an integral part of the broader regulatory framework for the financial sector, and complements their supervision.[7] It is widely accepted that corporate governance rules impose standards of conduct on management and its supervisory bodies to help ensure its financial stability.[8]

It has already been pointed out that in recent years, the need for responsible and sustainable business practices has been particularly emphasized, which has significantly influenced the regulation of corporate governance in companies carrying out important activities, including insurance activities. However, it is worth noting that this will remain one of the leading issues for all companies in the future, including insurance companies. Therefore, the advancement and further development

[7] Guido Ferrarini, *Understanding the Role of Corporate Governance in Financial Institutions: A Research Agenda*, ECGI Law Working Paper No. 347/2017, March 2017, available at: *https://ssrn.com/abstract=2925721*, accessed on August 31, 2024, 15.

[8] *Ibid*.

of corporate governance in this area will certainly move toward sustainable, professional, and high-quality corporate governance across all sectors, particularly within companies in the financial sector.

III CORPORATE GOVERNANCE IN INSURANCE COMPANIES

All corporate governance topics that are of general interest to corporate law theory and legislation are also important for the specific area of corporate governance in insurance companies. In Serbian law, these issues are largely regulated by the provisions of the insurance law.[9] In addition, general provisions of company law and corporate governance apply to insurance companies (as well as to reinsurance companies, insurance brokerage firms, insurance representatives, and insurance agents), unless otherwise regulated by specific provisions.[10] Among secondary regulations, the most significant is Guideline No. 2 of the National Bank of Serbia on Corporate Governance in Insurance Companies, adopted to promote more effective corporate governance in insurance companies.[11] However, the aim of the Guideline is to *suggest* a way to organize and conduct management and supervisory activities to improve the operational efficiency of insurance companies. It is a source of soft law, and the application of the rules defined in the Guideline is not binding, but it is recommended for insurance companies.[12]

In order to fulfil the obligation of harmonizing domestic laws with EU regulations, Serbian law aligns with EU law. In the insurance field, and particularly in corporate governance, the most important EU source is Directive 2009/138 on the taking-up and pursuit of the business of insurance and reinsurance – Solvency II.[13] Its provisions are further elaborated in the Commission Delegated Act 2015/35, which outlines a three-pillar structure – the first concerns rules on capital, the second, of the greatest relevance to this paper, elaborates governance rules, while the third addresses increased transparency.[14] The provisions of EU law have significantly influenced a large number of provisions of the Serbian Insurance Law, including

[9] Insurance Law, *Official Gazette of the RS*, No. 139/2014 and 44/2021.

[10] Art. 18 of the Insurance Law.

[11] National Bank of Serbia, Guideline No. 2 on Corporate Governance in Insurance Companies, available at: *https://www.nbs.rs/export/sites/NBS_site/documents/propisi/propisi-osig/smernica_2_korp_upravljanje.pdf*, accessed on August 31, 2024.

[12] Objectives of the Guideline, 1.

[13] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), OJ L 335, 17.12.2009; hereinafter: Solvency II Directive.

[14] Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) – Consolidated text, OJ L 12, 17.01.2015.

rules on ownership participation, the structure and functioning of governing bodies, and especially the governance system in insurance companies. To further support the implementation of EU provisions into Serbian law, the National Bank of Serbia adopted the Strategy for the Implementation of Solvency II in the Republic of Serbia in May 2021.[15]

Numerous other sources of "soft" law are particularly important in this area. These have been developed within the EU, such as the 2010 Green Paper on Corporate Governance in Financial Institutions, which applies across the financial sector.[16] Particularly relevant in the insurance domain is the activity of the European Supervisory Authority in the field of insurance and occupational pension schemes (*European Insurance and Occupational Pensions Authority* – EIOPA), which has developed a Guideline on the Governance System in Insurance Companies.[17] At the global level, an important source is the OECD Guidelines on Governance in Insurance Companies, with the latest amendments from 2017.[18] Corporate governance in insurance companies is also addressed by the Insurance Core Principles developed by the International Association of Insurance Supervisors (IAIS).[19]

1. Principles of Operation of Insurance Companies

The Insurance Law prescribes the fundamental principles governing the operations of insurance companies, reinsurance companies, insurance brokers, insurance agents, and insurance representatives.[20] The first principle establishes the *duty to operate lawfully*. According to this principle, *insurance companies are required*

[15] National Bank of Serbia, Strategy for the Implementation of Solvency II in the Republic of Serbia, May 2021, available at: *https://www.nbs.rs/export/sites/NBS_site/documents/osiguranje/strategija_solventnost_II-.pdf*, accessed on August 31, 2024.

[16] European Commission, *Green Paper: Corporate governance in financial institutions and remuneration policies*, COM(2010) 284 final, Brussels, 2 June 2010.

[17] EIOPA, *Guidelines on System of Governance*, EIOPA-BoS-14/253 EN, 1 January 2014, available at: *https://www.eiopa.europa.eu/publications/guidelines-system-governance_en*, accessed on September 31, 2024.

[18] OECD Guidelines on Insurer Governance, 2017 Edition, available at: *https://web-archive.oecd.org/temp/2017-11-16/95651-48071279.pdf*, accessed on August 31, 2024.

[19] International Association of Insurance Supervisors, *Insurance Core Principles and Common Framework for the Supervision of Internationally Active Insurance Groups* (Updated, November 2019), available at: *https://www.iaisweb.org/uploads/2022/01/191115-IAIS-ICPs-and-ComFrame-adopted-in-November-2019.pdf*, accessed on August 31, 2024.

[20] Article 19 of the Insurance Law. This paper will further address the rules applicable to joint-stock insurance companies. Not only is this the most common form of company in Serbia, but provisions regulating corporate governance in joint-stock insurance companies also apply to other forms and types of insurance companies. Mutual insurance companies are rarely discussed in theory and practice. For more on some governance issues in this form under comparative law, see Henry Hansmann, *The ownership and governance of mutual insurance companies*, 9 August 2022, available at: *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4186367*, accessed on August 31, 2024, 27–32.

to conduct their activities in accordance with the law, general acts, business policies, the rules of the insurance, and the actuarial profession, as well as by good business practices and business ethics. In addition, the principle of *due diligence is defined*. This principle stipulates that *companies must act in accordance with the principle of cautious and conscientious conduct*. It refers to a standard that has been adopted from European regulations. Instead of providing an exhaustive list of permitted or prohibited activities, as was previously the case under EU law, various actions of insurance companies are now covered more generally by the standards of due diligence and of cautious and conscientious conduct.[21] These principles of lawful and diligent conduct complement the strict regulatory rules on capital adequacy (the quantitative regulatory aspect) and the corporate governance systems (the qualitative regulatory aspect), supported by continuous supervisory oversight in these key areas.

This does not refer to any specific duties that would otherwise not bind insurance companies unless explicitly stated. It is clear that companies are always obliged to operate lawfully and with due care, even if not specifically emphasized. The inclusion of general operational principles highlights the particular socio-political importance of providing financial services, including conducting insurance activities. The legislator thus underscores the seriousness expected from entities engaged in this activity and imposes the most stringent operational conditions. This not only requires adherence to imperative regulations but also emphasizes the importance of respecting professional norms, customs, business ethics, and increased caution in decision-making.[22] In this field, perhaps more than in others, it is not only regulatory compliance and conscientious conduct that matters but also corporate culture, the values to which the company aspires, and adherence to ethical principles.[23] Typically, these values will stem from the company's management and those individuals with the greatest responsibility for ensuring the secure and efficient operation of the insurance company. Therefore, their enhancement and compliance with the principles of good governance are essential to achieving the goals expected from insurance companies.

However, the growing number and complexity of rules and principles (particularly those tied to sustainable management in insurance companies) make business decision-making more complex and, as a result, more challenging. Consequently, the duty of insurance companies not to violate any applicable rules or

[21] A. van den Hurk, M. Siri, 65.

[22] In this regard, the purpose of a company is increasingly understood to be based on the primary interest of shareholders, but also to encompass the fundamental principles of business ethics and sustainable operations. Guido Ferrarini, "Corporate Purpose and Sustainability Due Diligence", *Sustainable Finance in Europe: Corporate Governance, Financial Stability, and Financial Markets* (eds. Danny Busch, Guido Ferrarini, Seraina Grünewald), 2nd edn., Palgrave Macmillan, Cham, 2024, 124.

[23] A. van den Hurk, M. Siri, 44.

standards has become a serious burden and a challenge for company leadership.[24] These operational principles set higher standards for conducting business activities, particularly in the decision-making context. They also highlight the interests that the insurance company must consider. This is not simply about profit-making, but a more demanding business approach that requires expert, responsible, and conscientious conduct. EU law similarly emphasizes the obligation to comply with rules established under the Solvency II Directive and establishes the responsibility of management members for adhering to these rules.[25] The Directive's approach to the responsibility of management members is more principle-based, rather than relying on specific rules as previous regulations did. This approach is believed to contribute to strengthening the accountability of management members.[26]

Accordingly, *defining the interests of a company engaged in insurance business implies compliance with these particularly emphasized principles*. The principle of lawful and diligent conduct will be especially important when evaluating whether certain individuals with specific duties acted by the defined interests of the insurance company. This will be further discussed later in the paper.

2. Participation and Control in Insurance Companies

Although the Companies Act[27] regulates in detail the concepts of related parties, significant and majority shareholding, and control, these issues are specifically and often more strictly regulated by the Insurance Law. Specific rules define related parties, general concepts of shareholding in another entity, especially qualified, significant, and controlling shareholding, and the concept of close links.[28] Additionally, they regulate the conditions of cross-shareholding and the consequences of acquiring participation to a certain degree.

The reason for the specific regulation of these issues is multifaceted. Apart from the need for increased oversight over those entities that hold shareholdings or control over insurance companies, and their influence on capital rules, these issues are particularly significant in the domain of corporate governance to avoid

[24] Generally, regarding the impact of ESG on business decision-making and the duty of care, see Thilo Kuntz, *How ESG is Weakening the Business Judgment Rule*, *Research Handbook on Environmental, Social and Corporate Governance* (ed. Thilo Kuntz), Edward Elgar Publishing, Cheltenham, UK – Northampton, MA, USA, 2024, 68–69.

[25] Art. 40 of the Solvency II Directive.

[26] Paola Manes, *Corporate Governance, the Approach to Risk, and the Insurance Industry under Solvency II*, *Solvency II: A Dynamic Challenge for the Insurance Market* (eds. Mans Andenas, Renzo G. Avesani, Paola Manes, Francesco Vella, Philip R. Wood), Mulino, Bologna, 2017, 114.

[27] Companies Act (Zakon o privrednim društvima – ZOPD), *Official Gazette of the Republic of Serbia*, Nos. 36/2011, 99/2011, 83/2014 – other law, 5/2015, 44/2018, 95/2018, 91/2019, and 109/2021.

[28] Articles 28–30 of the Insurance Law.

situations of conflict of interest. Therefore, the definition of shareholding, control, and affiliation with the insurance company is crucial for determining the specific duties of certain persons toward the insurance company.

However, a legitimate question arises as to whether it is necessary to specifically define the rights, obligations, and duties within an insurance company, as the Insurance Law provides, in parallel with existing definitions in general company law.[29] The rules of the Solvency II Directive approach this issue differently and, in our opinion, more effectively, as the directive explicitly defines only those general terms to which it then links specific and well-defined consequences.[30]

a) Concept of Participation and Control

It is considered that an entity has participation in another when it has, directly or indirectly, the ability to exercise effective influence over the management or business policy of that other entity. This is most commonly through voting rights, i.e. participation in capital. However, the possibility of exercising effective influence over management and business policy can also be based on other circumstances, including contractual, business, or other relationships with the entity.

Unlike the general rules of Company Law, the Insurance Law specifically defines the so-called *qualified participation in a legal entity* as a situation where an entity directly or indirectly has the right or the ability to exercise 10% or more of the voting rights or participation in its capital. Moreover, the ability to effectively influence management or business policy also implies the existence of qualified participation.[31] The National Bank of Serbia, in Guideline No. 2, has defined recommendations for good corporate governance, which concern shareholders with qualified participation. These guidelines emphasize secure methods of registering and transferring ownership, timely and regular information transmission, participation in the assembly, and voting, especially when deciding on the election or dismissal of management board members and when distributing profits.[32]

[29] As we will see, the Insurance Law has specifically regulated certain concepts, while some terms or institutions it uses have remained undefined. For example, the concept of "control" is not specifically defined. This can lead to discrepancies between the specially defined and general terms from the Companies Act. The Insurance Law contains only a specific definition of "controlling shareholding" (as shareholding in a company of 50% or more of the voting rights or capital of the company), which does not correspond to the concept of control from Article 62, par. 5 of the Companies Act, and its application extends not only for determining controlling shareholding but also for other purposes (e.g. under general rules regarding duties within a company).

[30] For example, the Solvency II Directive does not define general terms such as control, majority holding, etc., except for the concept of qualified holding, for which it then links specific consequences — for instance, in the supervision over the acquisition of qualified participation. See Arts. 13(20) and 13(21), as well as Art. 24 of the Solvency II Directive.

[31] Here, the distinction between participation and qualified participation is not sufficiently precise, as both are defined as "the ability to effectively influence the management or business policy of another entity".

[32] Section II: Shareholder Rights, Guideline No. 2.

Significant participation is linked to a threshold of 20% or more voting rights or participation in its capital. Significant participation exists through the possibility of effectively exerting significant influence over the management or business policy of the legal entity.

Control participation occurs when an entity holds 50% or more of the voting rights or participation in the ownership of a legal entity. Additionally, control is present when it allows the appointment of more than half of the members of the management or supervisory body of the legal entity, or when it provides the ability to effectively exert controlling influence over the management or business policy of the legal entity. In this context, control is specifically tied to majority participation in the legal entity and the appointment of members of the company's bodies. Other forms of control are included in the general possibility of exerting effective controlling influence over the legal entity, leaving a broad scope for circumstances that may lead to it.[33]

Closely related entities are natural or legal persons when there is a relationship of significant or controlling participation, or permanent affiliation with a third party through controlling participation. The latter case of close affiliation refers to various indirect relationships, especially those within a corporate group.

The legislator had a particular need to define *indirect participation*, which refers to a situation where an entity does not directly hold participation (ownership) in another legal entity, but has the possibility of effectively exercising participation in management or capital by utilizing the direct participation of another entity. The method and establishment of using another entity's participation are not defined, but these are typically cases of indirect participation through control in (multilevel) controlled companies.

b) The Concept of Related Parties

The Insurance Law encompasses a broad range of individuals to highlight the various relationships through which they may influence a joint-stock insurance company and its operations.[34] Therefore, defining related parties is of particular importance for establishing standards and ensuring compliance with the rules and principles of good corporate governance. The definition of this group of individuals is also important for other regulations (capital, supervision, etc.). However, the specific definition of related parties (which is substantively different from the general definition of related parties under the Company Law) is misaligned and inconsistent with other general principles of corporate law.[35]

[33] For the concept of control in general corporate law theory, see Tatjana Jevremović Petrović, *Grupe privrednih društava (Groups of companies)*, Faculty of Law, University of Belgrade, Belgrade, 2014, 80–118.

[34] Art. 30 of the Insurance Law.

[35] For instance, the provisions of the Companies Act regarding special duties toward the entity are applied to insurance companies, although the concept of related parties is also significant for the application of

Related parties are defined as *mutually connected individuals*. Their connection is established through management, capital, or other means. The purpose of the connection among these individuals is to achieve a common goal, while its consequence is mutual influence on the operations or business outcomes of these parties. The list of related parties is open-ended, with the most common types of relationships being specifically enumerated. These include, in particular, relationships that establish participation in a legal entity, the ability to influence the financial position of another party, relationships arising from various contracts (power of attorney, employment contracts, or service contracts), and personal or family relations.

As *related parties to a joint-stock insurance company*, include members of the group of companies in which the company is a part, members of their boards, and individuals who are directly or indirectly related to those individuals, by family ties or participation (ownership) or controlling participation.

c) Shareholder Rights in Insurance Companies

In the guidelines adopted by the National Bank of Serbia in order to improve corporate governance, several important recommendations have been made to encourage insurance companies to ensure the full exercise of shareholder rights while respecting their equal treatment.[36] Special emphasis is placed on the protection of minority shareholders, the publication of dividend policies, remuneration policies, information about institutional investors, control within the insurance company, and shareholder agreements. It is recommended to encourage shareholder participation in the operations of the company, with equal treatment of all shareholders of the same class of shares, domestic and foreign shareholders, controlling and external shareholders.

3. Corporate Bodies of the Insurance Joint-Stock Company

The most important organizational form of a company engaged in the insurance activities is the insurance (or reinsurance) company in the form of a joint-stock company.[37] Its bodies are organized according to the model of two-tier governance,

these provisions. Our authors have noted this inconsistency and emphasized that the need for specific definitions of related parties in specialized entities (including insurance companies) should not be disputed, but that the issue should be approached systematically, with unified definitions. See Jelena Lepetić, *Povezana lica u poslovnom pravu*, *Law and Economy*, No. 10-12/2015, 21–23, 28–29, 38.

[36] Sections II and III: Shareholders' Rights and Equal Treatment of Shareholders, Guideline No. 2.

[37] In addition to this form, the Insurance Law allows an insurance company (but not a reinsurance company) to be established as a mutual insurance company. For the forms of insurance companies and for the performance of insurance activities in general, see Art. 20 of the Insurance Law. The provisions regarding the bodies, management, and members of the management board are specifically regulated

consisting of the assembly, supervisory board, and executive board.[38] The organization and rules of operation of the bodies of an insurance joint-stock company largely rely on the general principles of the company law, and thus, in addition to the Insurance Law, which regulates the general rules regarding the structure and responsibilities of the corporate bodies of a joint-stock insurance company, the Companies Act is also significantly applied. The guidelines issued by the National Bank of Serbia are also important as they encourage insurance companies to improve their corporate governance rules.

However, the traditional corporate governance model cannot be fully applied to insurance companies, considering their specific business activities. Namely, insurance joint-stock companies and other financial service entities play a central role among the participants in the market. Additionally, they play an important role in the stability of the financial system. Finally, they perform a significant social function. Therefore, the conduct of their business is much more focused on achieving broader social goals, especially protecting the interests of insurance policyholders. This is why the legislator pays special attention to ensuring higher-quality and safer management in insurance companies. Special focus is placed on the structure of the corporate bodies and the composition of their members, to ensure independent management and control by qualified individuals.[39] For all companies in the financial sector, the structure and, in particular, the qualifications of the management board members are of special importance. In these companies, there is less competition than in regular companies, although the sector is more strictly regulated, and the business activities are generally more complex than in non-financial sectors.[40]

Finally, in these companies, special importance is attached to the rules regarding the information transmission, especially transparency, not only in the traditional sense of protecting shareholders, creditors, or third parties, but primarily as a mechanism for ensuring effective supervision over the company's activities.[41] Here, transparency primarily serves the function of enabling easier and more efficient supervision of the activities of the insurance company.[42] Furthermore, particularly in insurance companies, the need for risk management and oversight of its

for insurance joint-stock companies but are correspondingly applied to reinsurance joint-stock companies and mutual insurance companies (Art. 80 of the Insurance Law). The further text will not specifically address these two forms but will focus only on the insurance joint-stock company. Furthermore, there will be no specific discussion on insurance brokerage companies or insurance representation companies.

38 Art. 50 of the Insurance Law.

39 K. J. Hopt, 13, 18.

40 Jonas Abraham Akuffo, *Corporate Governance and Accountability of Financial Institutions: The Power and Illusion of Quality Corporate Disclosure*, Palgrave Macmillan, 2020, 40.

41 For the main functions of disclosure in corporate law, see more Tatjana Jevremović Petrović, *Creditor Protection Through Mandatory Disclosure Rules*, *Law and Economy*, No. 4–6/2011, 187–215.

42 K. J. Hopt, 24.

implementation is pronounced, and a strict division of responsibilities and internal control systems are essential elements of the corporate governance of insurance companies.[43]

a) Structure of the Governing Bodies and Their Competencies

The general assembly of the insurance joint-stock company consists of all the company's shareholders. Its scope of work covers numerous status-related matters, decisions about the company's capital, its increase and decrease, asset-related issues, and matters related to the company's business results.[44] In relation to other bodies, the most important scope of the general assembly is the appointment and dismissal of members of the company's supervisory board. An imperative rule prohibits transferring specifically prescribed powers of the insurance joint-stock company to other bodies, thus ensuring a strict division of competencies in this type of company.

The supervisory board of the insurance joint-stock company consists of at least three members, who are appointed and dismissed by the general assembly. The scope of the supervisory board includes matters concerning the company's business goals, strategy, and operations. It has significant election-related competencies, as it appoints, supervises the work of, determines remuneration for, and dismisses members of the company's executive board. It also appoints and dismisses the company's actuary, proposes the company's external auditor to the general assembly, and grants and revokes powers of attorney. The supervisory board is responsible for overseeing the business policy, reporting on the company's operations, the internal control system, and the establishment of a risk management system, as well as monitoring it. It also holds significant powers regarding the work of the general assembly, the issuance of shares, and decision-making on matters related to the company's assets and capital. In terms of good corporate governance, their competencies regarding their responsibilities in managing or preventing conflicts of interest among shareholders, related parties, and other entities with duties towards the company are particularly important.

The executive body of the insurance joint-stock company is composed of the *executive board,* composed of at least two members. Apart from the representation duties, which fall under the authority of the president of the executive board, the most important competencies of this body include the management of the company's operations and supervision over the organization and activities of its employees.[45] It has a residual scope of competencies in matters not specifically

[43] In this context, the role of the Board of Directors is considered crucial. See Danny Busch, Guido Ferrarini, Gerard van Solinge, *Governing Financial Institutions: Law and Regulation, Conduct and Culture*, *Governance of Financial Institutions* (eds. Danny Busch, Guido Ferrarini, Gerard van Solinge), Oxford University Press, Oxford, 2019, 13.

[44] Art. 52 of the Insurance Law.

[45] Arts. 57–58 of the Insurance Law.

assigned to the general assembly or the supervisory board. This body bears a special duty to ensure the proper organization of operations, particularly in the need to form committees and other bodies that will improve the work of the board and facilitate communication and the exchange of information and policies within the company.

b) Appointment and Dismissal of Members of the Management Bodies

To simplify the regulation of numerous issues related to the individuals who make up the members of the supervisory and executive boards, the Insurance Law defines that the management of the joint-stock insurance company consists of the supervisory and executive boards. The law also specifically outlines the conditions under which a person may be appointed as a member of these boards.[46]

The conditions for performing the function of a management member are defined through the *fit and proper* rule. This rule originates from EU law and is established to define the minimum conditions and standards for appointing individuals holding certain positions in insurance companies, as well as other entities operating in the financial services sector. In particular, for individuals who effectively manage the company or hold leading positions, it is required that they continuously meet the professional qualifications, knowledge, and experience necessary for prudent and conscientious management (referred to as *fit*). Furthermore, these individuals must also have a good business reputation and integrity (as an element of the *proper* concept).[47] This requirement elaborates on the need to assess the honest and financially reasonable conduct of the individual being appointed based on their characteristics, as well as their private and professional behaviour.[48]

In insurance companies operating in the EU, this condition has a broader scope and applies to all individuals holding key positions within the company. These include, in addition to shareholders, others who effectively manage the company or occupy leading positions from which they manage the team and other individuals within the group.[49] The concept of individuals who effectively manage the company is broader than just board members (members of the management board) and is considered to include those in leading positions outside the board.[50] It also includes those who hold key positions within the company. These key positions are considered

[46] Art. 59, par. 1, and Art. 62 of the Insurance Law.

[47] Art. 42 of the Solvency II Directive.

[48] Art. 273, par. 4 of the Delegated Act of the European Commission 2015/35.

[49] Recital 34 and Art. 26 of the Solvency II Directive.

[50] For a detailed discussion, including ambiguities regarding its precise scope, see Danny Busch, Iris Palm-Steyerberg, *Fit and Proper Requirements in EU Financial Regulation: Towards More Cross-Sectoral Harmonization*, *Governance of Financial Institutions* (eds. Danny Busch, Guido Ferrarini, Gerard van Solinge), Oxford University Press, Oxford, 2019, 190–191.

to include at least those within the management system, such as individuals responsible for risk management, compliance, internal audit, and the actuarial function.[51]

A delegated act by the European Commission further elaborates on the *fit and proper* rule. It emphasizes that, for the evaluation, professional and formal qualifications, knowledge, and experience in the field of insurance or the financial sector, as well as the specific duties the individual has performed in their prior work experience, must be taken into account.[52] It is also necessary to consider the diverse expertise and qualifications of the board members to ensure that they can professionally organize the management and supervision within the company.[53]

The role of these individuals in the company is proactive, and it is understood that it is not enough for the management board members to rely solely on information coming from employees within the company, especially those in high positions who are not formal management board members.[54] In theory, there is a discussion about the extent to which the requirement for a proactive role of the management board members is grounded in the current European regulations, and to what extent such behaviour might harm the efficiency and the fundamental principle of corporate governance in insurance companies, which involves a strict separation of powers among the company's bodies.[55] Finally, unlike other financial institutions, EU law does not require insurance companies to meet criteria regarding their personal independence and autonomous decision-making, nor does it set requirements regarding the time these individuals have available to dedicate to their duties.[56]

The Insurance Law defines the *fit and proper* standard through the requirement that a management board member must have a good business reputation, as well as appropriate qualifications, knowledge, and experience necessary to perform this function.[57] In theory, the importance of these objective (professional qualifications and experience) and subjective (in business conduct and integrity) conditions

[51] *Ibid*.

[52] Art. 273, par. 2 of the Delegated Act of the European Commission 2015/35.

[53] Art. 273, par. 3 of the Delegated Act of the European Commission 2015/35.

[54] A. van den Hurk, M. Siri, 49.

[55] *Ibid.*, 50.

[56] For more on these criteria in relation to other financial institutions, see D. Busch, I. Palm-Steyerberg, 199–201.

[57] The detailed rules regarding the fulfilment of this condition have been elaborated by the National Bank of Serbia, which regulated this issue through the Decision on the Implementation of the Provisions of the Insurance Law Relating to the Issuance of Licenses for Insurance/Reinsurance Activities and Certain Approvals of the National Bank of Serbia, *Official Gazette of the RS*, no. 55/2015, correction 69/2015, 36/2017, 29/2018, and 44/2024. It is specified that good business reputation refers to personal, professional, and moral integrity that would allow the individual to perform their duties honestly and diligently – with the care of a prudent businessman and in accordance with the rules of secure and good business practices. In addition to the indicators used to assess these qualities, there is also an explicit set of circumstances under which it will be considered that an individual does not have a good business reputation.

is emphasized, and the possibility of licensing candidates for management board positions in insurance companies is considered.[58]

This is the only specific *positive condition for appointing* an individual to perform the function of a management board member. However, there are numerous negative conditions for appointment, including the so-called disqualification of an individual from holding the position of a management board member. *Negative conditions* include a final conviction for a criminal offense resulting in an unconditional prison sentence, or a criminal offense that makes the individual unfit to perform the function of a management board member, as well as a final measure prohibiting the performance of certain activities. Disqualification from holding the position of a management board member applies if the individual was authorized to represent and act on behalf of a legal entity, or was a member of its governing body on the day the financial sector entity's operating license was revoked, or within six months before that date, or on the day of the introduction of receivership or the initiation of bankruptcy or compulsory liquidation procedures. The purpose of disqualification is primarily to protect the public interest.[59] Furthermore, a management board member cannot be someone whose consent to perform the function of a management board member/other function has been revoked in the past three years, or who has been dismissed from the management board.

Other *obstacles to appointment* include the fact that an individual cannot be connected to a legal entity in which the insurance joint-stock company holds more than 5% of the capital or voting rights. The individual cannot be a member of the management or supervisory board, or a proxy in another insurance/reinsurance company or another entity in the financial sector, except in cases where the individual is a member of the management or supervisory board of a controlled subsidiary.

Additionally, it is required that at least one member of the supervisory and executive boards must have active knowledge of Serbian and have residence in the

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In the section detailing the conditions for granting prior approval for the appointment of a management board member in an insurance company, it is stipulated that appropriate professional qualifications, knowledge, and experience are indicated by at least the first degree of higher education from an academic program lasting at least four years, three years of managerial experience in a financial sector company, or five years of experience in insurance and finance or a managerial position in significant business activities of the company. Among the documents required to prove fulfilment of the conditions, a recommendation letter from the responsible person or body of the legal entity where the proposed candidate was employed or engaged is required—highlighting the subjective element in evaluating the reputation, knowledge, and experience. Finally, the National Bank of Serbia, when determining whether the candidate meets the conditions for performing the duties of a management board member, evaluates the individual's ability, considering all the conditions and, therefore, this falls under the discretionary authority of this body. Points 25–29.

[58] Natasa Petrović Tomić, *Pravo osiguranja, Sistem,* Knjiga I (Insurance Law, System, Book I), *Official Gazette*, Belgrade, 2019, 197–198.

[59] *Ibid*., 201.

Republic of Serbia, while other members of the executive board must reside in the Republic of Serbia. All members of the executive board must be employed full-time in the insurance joint-stock company where they hold the position of board member.

c) Independent Members of the Supervisory Board

One of the significant rules that imposes more stringent corporate governance standards is the requirement for a greater number of independent members on the supervisory board. Simply put, the role of independent board members is to encourage independent decision-making within the supervisory board.[60] In corporate governance theory, the existence of independent members in the management is considered a decisive provision that affects the composition of the company's governing body.[61] The obligation to have independent members arises from the need to protect the interests of certain parties, here, especially the interests of insurance policyholders in addition to shareholders, from the negative influence of executive directors, but also any other directors whose actions may not be independent.[62]

General rules of company law require that public joint-stock companies must have at least one independent director in a one-tier management system or at least one independent member of the supervisory board in a two-tier management system.[63] In contrast, the number of independent members is higher in insurance joint-stock companies, where, according to the provisions of the Insurance Law, they must comprise at least one-third of the supervisory board members.[64] However, it is considered that the requirement for a higher number of independent directors in financial sector companies is far less important than their professional knowledge and experience, except in matters related to conflicts of interest.[65]

Among the guidelines for establishing better corporate governance, it is especially recommended that the insurance company establish a process for appointing and dismissing independent members of the supervisory board in a way that ensures the protection of minority shareholders.[66] For example, the company could achieve this by implementing cumulative voting rules when appointing these individuals. Furthermore, independent members of the supervisory board should be provided with opportunities to actively participate in decision-making and have easier access to information.

60 A. van den Hurk, M. Siri, 46.
61 K. J. Hopt, 24.
62 *Ibid*., 25.
63 Arts. 392 and 437 of the Companies Act.
64 Art. 54 par. 2 of the Insurance Law.
65 K. J. Hopt, 26.
66 Section III: Equal Treatment of Shareholders, Directive No. 2.

d) External Supervision by the NBS on Corporate Governance Issues

Insurance companies are under the supervision of the National Bank of Serbia (NBS) in carrying out their activities. This supervision covers various aspects, including the establishment, legality of operations, treatment of insurance service users, and the overall implementation of policies and requirements aimed at ensuring and protecting the capital, liquidity, and solvency of the insurance company. It is also possible for the supervision to extend to other legal entities that are connected with the insurance company.[67] In the field of corporate governance, supervision is carried out through the control of compliance with conditions relevant to this area, especially in relation to individuals holding executive positions. The supervision also includes the application of the management system within the company.[68]

The important aspect of the NBS's supervision involves the appointment and oversight of the management board of the insurance company. The appointment of a management board member requires prior approval from the NBS, without which the appointment is considered null and void.[69] Particularly important is the NBS's authority to revoke the approval for the exercise of the management role, not only in cases where an individual fails to meet all the prescribed requirements, but also if the individual fails to comply with the duties of a management board member, or if it is determined that conditions for introducing compulsory administration have been met.[70] This is a discretionary power that the NBS holds concerning the imposition of supervisory measures.[71]

In order to enhance control over the fulfilment of the conditions for holding a management position and to reduce the risk of conflict-of-interest situations, specific duties of informing the NBS are prescribed for the management board members. These duties specifically relate to the appointment and termination of the individual's position in the management or supervisory bodies of other legal entities. Furthermore, the management board member is obliged to inform the NBS about legal transactions through which they, or a member of their family, have directly or indirectly acquired shares in a legal entity, thereby increasing or decreasing their own or a family member's qualified participation. The NBS is authorized to order the dismissal and suspension of management board members or introduce compulsory

[67] See Art. 187 paras. 1–2 of the Insurance Law.
[68] Art. 13 of the Insurance Law.
[69] Art. 61 par. 1 of the Insurance Law.
[70] Art. 64, par.1 of the Insurance Law. These are, in fact, the foundations of an effective management system, which is considered crucial at the EU level to achieve the objectives of regulation and supervision in the insurance sector. Influenced by the rules from the Solvency II Directive, these provisions also form the basis of the governance system in our domestic law.
[71] N. Petrović Tomić, 200–201.

administration while also having the authority to impose monetary penalties on the insurance company and the responsible individuals.[72]

e) System of Governance

At the core of EU regulations governing the management of insurance companies lies an effective system of governance that ensures the prudent and conscientious conduct of the company's operations. One of the most important aspects of the operation of all companies in the financial sector, particularly those exposed to special and significant risks, is not the elimination of risks in business, but their recognition, understanding, and particularly the management of these risks.[73] Although enhanced, risks differ depending on the business activities carried out by companies. Therefore, there are specific risks within insurance companies, among which the insurance risk, arising from the very nature of their activity, is especially characteristic.[74] This risk consists of forecasting, collecting, and distributing risks, especially from individuals (consumers or business entities) to other persons or groups of people.[75] As such, it has an expressed social function, but also a responsibility in preventing and encouraging the reduction of certain risks.

Additionally, insurance companies are significantly affected by market risks, liquidity risks, and other business risks.[76] These risks are closely linked to the requirements for the formation and maintenance of capital as prescribed by the Solvency II Directive and, under its influence, domestic law. Finally, by encouraging the participation of insurance companies in the capital market, the risks they face are further increased, and together with other participants in the financial market, they are exposed to additional systemic risks, especially in situations where they are organized into groups whose members perform different financial services.[77]

Proper identification, assessment, and risk management are the core to the secure operation for insurance companies, making it one of the central themes of their good corporate governance. To ensure high-quality risk assessment and management, as well as the overall governance and control of insurance companies, key characteristics of an effective governance system include an adequate and transparent organizational structure with clearly defined responsibilities, as well

[72] Art. 197 par. 1 points 5 and 7, 204, and 206 of the Insurance Law.
[73] P. Manes, 100.
[74] Further information on the differences between the risks faced by different financial institutions see *Ibid.,* 105.
[75] A. van den Hurk, M. Siri, 56.
[76] For more on the different functions of financial organizations and their connection with risks in their operations, see G. Ferrarini (2017), 4–6.
[77] P. Manes, 106–107.

as an efficient information transmission system.[78] However, theory highlights that while these are key aspects, they do not have to be the only characteristics of the governance system, and other features can be identified in addition to them.[79] The governance system must be proportionate to the nature, size, and complexity of the activities carried out by insurance companies. This requirement is particularly important as it ensures proportionality and adapts management requirements and capital adequacy to the size of the company and the scope of its activities[80]. This corresponds to the understanding that regulation must be balanced and should not burden the company with excessive details on how to manage its risks.[81] The insurance company must provide a system that is fit for it, while the management must ensure and supervise its implementation. Still, there is an emphasis on the general regulatory framework, as well as the supervisory body's authorization to periodically assess the adequacy of the risk governance system.[82]

All key characteristics of the governance system have in common that they require special standards and conditions for the individuals responsible for them, and the supervisory body has insight into which individuals are performing these functions and must be informed of any changes. Finally, key functions are subject to strict conditions if they are to be delegated or entrusted to third parties.[83]

According to the Insurance Law, the insurance company must provide an effective governance system, which includes risk management, an internal control system, internal audit, and actuarial functions.[84] This system is also conditioned by the size and scope of activities, particularly the types of insurance the company provides.

The insurance company must ensure a *risk management system*. This is one of the most important modern aspects of management in insurance companies and is particularly emphasized in European regulations developed after the economic crisis, including provisions from the Solvency II Directive.[85] The insurance company must develop and implement various strategies, processes, and procedures to effectively identify, assess, measure, and manage risks.[86] Furthermore, good corporate governance is based on an effective *internal control system*. This part of the management system, modelled on EU rules, differs from risk management, although it is certainly connected, and involves ensuring compliance with all regulations applicable to the

[78] Art. 41 paras. 1 and 2 of the Solvency II Directive.
[79] A. van den Hurk, M. Siri, 53.
[80] *Ibid.*, 50; P. Manes, 112. In our case, these requirements are specifically regulated by the part of the law ensuring resources and capital adequacy in Chapter V of the Insurance Law.
[81] G. Ferrarini (2017), 18.
[82] *Ibid*.
[83] As referenced in: A. van den Hurk, M. Siri, 53.
[84] Art. 147 of the Insurance Law.
[85] Art. 44 of the Solvency II Directive.
[86] Specifically Section 2, Chapter VI of the Insurance Law.

insurance company and the efficient conduct of its operations to achieve its objectives.[87] According to the provisions of the Insurance Law, this means having appropriate administrative procedures, processes, and actions that the management organizes and applies according to the nature, complexity, and risk level of the business.

In the insurance company, it is necessary to organize an independent and autonomous *internal audit*, carried out in a specially organized part of the company.[88] The insurance company must engage at least one full-time employee to carry out internal audit activities. The internal auditor cannot be a member of the management board, nor is he authorized to perform other tasks within the insurance company that may be subject to internal audit. The internal audit is directly accountable to the supervisory board. Thus, governance and control are multi-layered and hierarchically structured.

Finally, the insurance company must engage a person in the role of an authorized actuary to perform actuarial activities.[89] This person is appointed and dismissed by the supervisory board of the insurance company. A person appointed to this role cannot be a member of the management board or an internal auditor. They must be independent and autonomous in performing their activities, and their work is subject to supervision by the National Bank of Serbia.

f) External Audit

An important verification of the financial results of an insurance company is carried out through an objective, professional, and impartial audit. The main goal of introducing such an assessment is to verify the operations of the insurance company, particularly its management. Hence, the significance of this control lies in the system of developed corporate governance.

In an insurance company, audits are conducted by licensed auditors employed by auditing firms.[90] The main objective of the audit is for the auditing company to express its opinion on whether the financial statements of the insurance company are prepared in accordance with regulations and whether they objectively and accurately reflect the company's financial position, business results, and cash flows. The insurance company selects the audit firm with prior consent from the National Bank of Serbia.

g) Remuneration

The remuneration of board members can lead to conflicts of interest between these individuals on one side and the company and its shareholders on the

[87] A. van den Hurk, M. Siri, 63.
[88] Art. 154 of the Insurance Law.
[89] Art. 161 of the Insurance Law.
[90] Arts. 182–186 of the Insurance Law.

other. Remuneration has particularly come under scrutiny in corporate governance following the economic crisis, and a significant number of provisions in recent years have attempted to regulate it.[91] The Insurance Law also provides specific rules on remuneration. According to its provisions, at least once a year, the general assembly must review written information on the salaries, remuneration, and other benefits of the members of the management board (supervisory and executive boards) as well as the supervisory board's proposal regarding salaries, remuneration, and other financial benefits for the following business year.[92] Additionally, this provision also establishes an obligation for the assembly to be informed and to review contracts concluded between the insurance joint-stock company and the members of the management board, or related parties, if they have obtained material benefits through such agreements.

In this regard, the EU-level provisions are particularly detailed in the Delegated Act of the European Commission.[93] The key principles emphasize that the remuneration policy and practices are closely linked to the company's risk management strategy and practices, as well as to its long-term objectives and business outcomes. It is necessary to include clear and transparent measures to avoid conflicts of interest, prevent discrimination, and ensure that the company's business activities and risk-taking are conducted responsibly. The establishment of a separate remuneration committee is encouraged, and the remuneration policy and practices, particularly those linked to performance, are to be thoroughly explained. Finally, recent amendments have considered the integration of sustainability risks into the risk management system to promote sustainable and responsible management within insurance companies.[94]

4. Duties in Insurance Companies

The rules governing the duties of specific individuals towards business companies are regulated by general corporate law principles, and they have significant applicability in insurance companies as well.[95] However, theory emphasizes that the classical conflict of interest that exists in non-financial sector companies has particular dimensions in insurance companies, given that the protection of interests goes far beyond that of ordinary companies.[96] Moreover, the market in these

[91] Remuneration is not specifically regulated by the Solvency II Directive from 2009, although it is detailed in the 2015 Delegated Act of the European Commission. This is explained in theory by the fact that interest in the issue of remuneration increased significantly only after the economic crisis. A. van den Hurk, M. Siri, 56. A. van den Hurk, M. Siri, 56.

[92] Art. 60 of the Insurance Law.

[93] See Art. 275 of the Delegated Act of the European Commission 2015/35.

[94] See especially Art. 275, par. 4 of the Delegated Act of the European Commission 2015/35.

[95] Arts. 61–80 of the Companies Act.

[96] J. Abraham Akuffo, 44, 48.

activities is less competitive and much more regulated, with continuous and strict supervision. Ultimately, the primary goal of oversight over corporate governance in insurance companies will generally be to ensure proper risk management and liquidity protection, thus safeguarding the interests of those outside the company, primarily the insurance policyholders.[97] Therefore, it is interesting to note that the classical duties of directors, even after the financial crisis, have not been significantly changed in financial institutions compared to classical companies in other sectors.[98]

The Insurance Law has not specifically regulated the duties within insurance companies, although some rules, particularly those regarding the duty to act in the interest of the company, are detailed and refined. Special provisions also include certain specific duties that deserve attention.

a) Duty to Act in the Interest of the Insurance Company

The question of the purpose for which an activity is carried out is one of the central and much-discussed issues of corporate governance.[99] It is worth recalling the ongoing debate about the purpose of a company and the interest of which persons with duties must be guided when making business decisions.[100] While leading American theory has emphasized the primary interest of shareholders (*shareholder primacy*) for many years,[101] at the other end of the spectrum is a group of various stakeholders from German legal culture *(stakeholder approach*), and somewhere in between is a more modern solution from English company law regulation (*enlightened shareholder value*).[102]

[97] *Ibid*., 44, 48.

[98] Steven L. Schwarcz, Aleaha Jones, Jiazhen Yan, *Responsibility of directors of financial institution*s, *Governance of Financial Institutions* (Eds. Danny Busch, Guido Ferrarini, Gerard van Solinge), Oxford University Press, Oxford, 2019, 166.

[99] "The purpose of the company is ... a central theme of corporate governance...", G. Ferrarini (2024), 121.

[100] The literature on this issue is vast, but here it is worth pointing to an interesting discussion after the European Commission published the Ernst & Young Study on Directors' Duties and Sustainable Corporate Governance (EY for the European Commission, *Study on Directors' Duties and Sustainable Corporate Governance: Final Report*, July 2020, available at: *https://op.europa.eu/en/publication-detail/-/publication/e47928a2-d20b-11ea-adf7-01aa75ed71a1/language-en*, 31 August 2024). Following its publication, there was an exceptionally lively debate on the goal of the corporate entity. See responses from several leading authors at: *https://www.ecgi.global/events/directors-duties-and-sustainable-corporate-governanc*e, accessed on 31 August 2024.

[101] However, 33 states in the United States mention the interests of other parties that the director must consider in their legislation. See S. L. Schwarcz, A. Jones, J. Yan, 156.

[102] See, for example, G. Ferrarini (2024), 122–123, and especially for a historical and comparative review, 127–139; similarly to that: Vuk Radović, „Cilj privrednog društva sa osvrtom na aktuelnu pandemiju" (*Corporate purpose with a look on COVID-19 pandemic)*, *Revija Kopaničke škole prirodnog prava*, No. 2/2021, 34–44; Klaus J. Hopt, *Corporate Purpose and Stakeholder Value – Historical, Economic and Comparative Law Remarks on the Current Debate, Legislative Options and Enforcement Problems*, *ECGI Law Working Paper*,

Insurance companies are specific entities because, due to the activities they perform, there is a particularly pronounced need for the protection of security and operational stability. Moreover, there is an increased need not only to protect investors or creditors but also the interests of other parties—particularly insurance policyholders. Therefore, in the corporate governance of insurance companies, the fundamental problem is the alignment of different goals.

Namely, should the company primarily (or exclusively) conduct its activities to generate profit, which is the classical goal of business companies, or should insurance companies also consider achieving specific objectives, such as protecting the interests of insurance service users, and more broadly, the stability of the financial system?[103] The European Union, in its regulations, specifically emphasizes that the most important goal of regulating insurance and reinsurance activities is the protection of the interests of policyholders and other users of insurance services.[104] Furthermore, since insurance companies are of exceptional importance for the functioning and stability of the financial services market, their regulation involves increased concern and stricter operating conditions to protect the public interest. These specific goals have led to the special regulation of oversight over companies performing insurance activities. The Serbian legislator gave the same meaning in the basic rules governing insurance companies, ensuring oversight over these entities *to protect the rights and interests of policyholders and other users of insurance services and to preserve and strengthen the stability of the financial system*.[105]

The Insurance Law contains a very complex definition that outlines the duty of the board to act in the interest of the insurance company.[106] The members of the board are required to take measures to prevent unlawful or inappropriate actions and influences that are harmful or not in the best interest of the joint-stock insurance company and its shareholders. These actions and influences refer to those carried out by persons closely connected to the company, with the ultimate goal to protect the interests of users of insurance services.

Thus, it is important to highlight the critical issue of the goal in which insurance companies, according to our regulations, should operate, or the interest being realized (and protected) in this context. This complex legal definition emphasizes multiple interests: the interest of the insurance company, the interest of its shareholders, and the interest of users of insurance services. This is a much more complex, multi-interest concept that requires the board to consider other interests

No. 690/2023, available at: *https://www.ecgi.global/sites/default/files/working_papers/documents/hopt-klausjcorporatepurposeandstakeholdervalueecgi.pdf*, accessed on 31 August 2024; K. J. Hopt (2021), 21.

103 D. Busch, G. Ferrarini, G. van Solinge, 13.

104 Recital 16 of the Solvency II Directive.

105 Art. 13, par. 1 of the Insurance Law.

106 Art. 59 of the Insurance Law.

in addition to operating in the interest of the company, as traditionally defined in corporate law theory.[107] On the one hand, they are required to prevent unlawful or inappropriate harmful actions and influences that are not in the interest of the company *and* its shareholders. Hence, these interests are assumed to be equal—or should be defined in a way that aligns them.

Additionally, the board must take measures to prevent actions and influences by persons closely connected to the company in order to protect insurance service users—those outside the company. Therefore, the interests of these persons are enhanced and placed on the same level as the interests of the insurance company and its shareholders. This is certainly a broader understanding of the interest of a business company than the classical one.

The definition of acting in the interest of the company in the Insurance Law does not provide sufficient arguments to support the conclusion that, according to it, the interests of the insurance company and its shareholders are equal to other interests (especially the interests of persons outside the company). However, what is worth noting here is the special position of insurance service users in defining the ultimate purpose of insurance companies' existence, and, therefore, their important place in defining the *interests of the insurance company*. The board of the company must act in the interest of the insurance company, considering the interests of users of insurance services. This means that the board should prioritize the interest of the insurance company, including, as its ultimate goal, the interest of users of insurance services, before the interest of shareholders, which is in conflict situations placed second.

A similar position is taken by the International Association of Insurance Supervisors (IAIS), which, in its recently revised definition of the Insurance Core Principles, explicitly emphasizes the principle of prudent and conscientious management and supervision of insurance activities, considering and protecting the interests of insurance service users.[108] The same is true of the OECD Guidelines on Corporate Governance in Insurance Companies, which require board members to act in the best interest of the company but also to consider the interests of insurance service users, or other stakeholders, as appropriate to the case.[109] Similarly, this thinking is reflected in European theory, not only for insurance companies but also for other financial institutions, particularly banks.[110] The consequence of this, it is believed, is not only the definition of the ultimate goal (here) as the protection of insurance

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[107] The general definition of acting in the best interest of the company in Article 63 of the Companies Act (ZOPD). In domestic theory, see also M. S. Vasiljević, 100–116.

[108] International Association of Insurance Supervisors, *Insurance Core Principles and Common Framework for the Supervision of Internationally Active Insurance Groups*, Updated, November 2019, available at: *https://www.iaisweb.org/uploads/2022/01/191115-IAIS-ICPs-and-ComFrame-adopted-in-November-2019.pdf*, accessed on 31 August 2024, Insurance Core Principle No. 7, 50.

[109] OECD Guidelines on Corporate Governance in Insurance Companies, Recommendation I A 1, 11.

[110] K. J. Hopt (2021), 22.

service users' interests, but the lesser significance of controlling shareholders, institutional investors, and generally issues relating to control.[111]

Finally, the duty of the board to take measures to prevent actions and influences requires their attention in various situations involving conflict of interest between other parties and the company, and its prevention, which is a much broader obligation than the classical duty to act in the interest of a business company.[112] This also exists alongside the duty to avoid conflicts of personal interest (and the interests of related persons) with the company's interest. Here, we are not talking about the duty of loyalty of board members—although such a duty certainly exists under general corporate law rules—but about the duty of diligence and increased oversight over other persons closely connected to the insurance company, and who may be in conflict with it. In other words, in the case of a conflict of interest between a related person and the insurance company, the board must prioritize the protection of the insurance service users' interests over the interests of other parties within the company (the board, shareholders, etc.).

The specific definition of the duty to act in the interest of the insurance company under Serbian law was not influenced by the most important provisions of EU law, which generally point out the obligation for the member states' legislation to ensure that the management and supervisory bodies of insurance companies have ultimate responsibility for complying with the rules adopted to regulate the insurance activity.[113] A similar obligation for insurance companies when conducting their activities is also provided in the Insurance Law, under the principles of operation, as previously discussed.[114] Moreover, EU law does not contain further rules on the interests of insurance companies, nor does it specifically regulate the duties of individual persons within these companies. However, as already noted, the recitals of the Solvency II Directive *generally* emphasize that *the main objective of insurance and reinsurance regulation and supervision is the adequate protection of policy holders and beneficiaries*.[115] Therefore, theory emphasizes that this means insurance companies must consider other interests, especially financial stability and a fair and stable market, as long as it does not harm the interests of insurance service users.[116]

To highlight the important social role of insurance companies, corporate governance guidelines contain recommendations for better informing and engaging stakeholders outside the company—policyholders, insurance users, etc.[117] However, the guidelines clearly emphasize that the growth and development of insurance

111 *Ibid*.

112 Art. 69 of the Companies Act (ZOPD).

113 Art. 40 of the Solvency II Directive.

114 Art. 19 of the Insurance Law, as well as the first section of the third part of this paper.

115 Recital 16 of the Solvency II Directive.

116 A. van den Hurk, M. Siri, 51.

117 Section IV: The Role of Stakeholders, Guideline No. 2.

companies cannot be achieved at the expense of the interests of these parties. This makes it clear that the interest of these parties is not equal to the interest of the insurance company (nor its shareholders), although it must be considered when determining whether the company is being managed in its best interest.

b) Duties Related to Legal Transactions

Among the special provisions regulating the duties in insurance companies is one that authorizes the supervisory board to take measures to eliminate conflicts of interest in legal transactions involving personal interests. Specifically, the supervisory board is required to ensure that legal transactions concluded with shareholders, related parties, or other parties having obligations to the company must not be less favourable for the company than similar transactions concluded under market conditions.[118] This measure elaborates on the general rule of working in the interest of the insurance company and specifies the actions that the members of the management must take to prevent harm or other consequences contrary to the interests of the company.[119] It is, by nature, stricter than the general rule, which does not prevent the conclusion of a deal or transaction if they are not concluded under market conditions. Instead, it requires the reporting and approval of the legal transaction or deal, even though there is a possibility of nullifying the transaction or deal if it was not concluded or undertaken at a fair value.[120]

c) Duty of Confidentiality

Among the specific provisions regulating the operations of insurance companies is the obligation to maintain confidentiality of sensitive data, which arises from the particularly sensitive activity that these companies perform.[121] The insurance company is required to keep confidential the information and circumstances it learns in the course of doing business with an insured party or other beneficiaries of insurance rights. However, in addition to the insurance company, a special duty to keep this information confidential applies to a certain group of persons, including members of the company's governing bodies, shareholders, employees of the insurance company, and others who, in connection with their work for the company or providing services to the company, gain access to this data.

[118] Art. 55, par. 19 of the Insurance Law.

[119] The general rule allows for the approval of a legal transaction or action in the case of a personal interest, with the determination of so-called fair value of the item or right being the subject of the transaction or action required when the value of the transaction exceeds 10% or more of the book value of the company's total assets. See Article 66 of the Companies Act.

[120] Art. 67 of the Companies Act.

[121] Art. 175 of the Insurance Law.

The duty to keep data confidential relates to the prohibition of disclosing or delivering such data to third parties, using, or enabling third parties to use such data. The obligation to keep data confidential persists even after the termination of the relationship under which the persons had access to the data. A violation of this obligation is subject to administrative sanctions.

d) Special Duties in the Vicinity of Liquidation or Bankruptcy: Duty of Notification

The special activity of the insurance company also imposes stricter duties on the management members in the vicinity of liquidation or bankruptcy.[122] Specifically, the executive board is required to notify the supervisory board in writing when the company's liquidity or solvency is at risk. The same obligation exists if there are grounds for the termination of the operational license or for the withdrawal of the license or prohibition of performing certain activities, or if the company fails to meet the conditions regarding capital adequacy. In each of these cases, there is a further obligation for the supervisory board to inform the National Bank of Serbia.

Failure to notify about the occurrence of these events is subject to individual liability of the members of the management board for the damage caused to the insurance company. There is also the possibility of administrative liability for a physical person.

IV A LOOK INTO THE FUTURE: SUSTAINABLE CORPORATE GOVERNANCE IN INSURANCE COMPANIES

Contemporary corporate governance has been significantly altered in terms of its content and objectives compared to previous rules. This applies to both the general theory and practice of corporate governance, as well as to specific (including financial) industries, including insurance companies. As early as 2018, the European Union promoted a sustainable economy, and the Final Report of the High-Level Expert Group on Sustainable Finance announced in its Foreword that "Sustainability is the theme of our time – and the financial system has a key role to play in delivering that set of ambitions".[123] Among other things, the recommendations in that report place special emphasis on promoting sustainability within the financial sector, giving insurance companies an important role in capital, long-term, and infrastructure

[122] Art. 65 of the Insurance Law.

[123] EU High-Level Expert Group on Sustainable Finance, *Financing a Sustainable European Economy: Final Report 2018 by the High-Level Expert Group on Sustainable Finance*, 2018, available at: *https://finance.ec.europa.eu/document/download/2e65cb1e-bd47-4441-816a-d89ec61eef45_en?filename=180131-sustainable-finance-final-report_en.pdf*, accessed on 31 August 2024, 3.

sustainable investments.[124] This is logical, as the activities of insurance companies are considered to be naturally closest to the goals of sustainable finance.[125]

Moreover, significant aspects of sustainable corporate governance are highlighted. Above all, stricter conditions are required of board members in financial sector companies so that these individuals have sufficient knowledge and skills in assessing and dealing with long-term risks in sustainable business practices.[126] Further development of this area (including the European Commission's Action Plan from 2018 and the Sustainable Finance Strategy from 2021) has remained committed to the sustainable economy, with strong reliance on companies in the financial sector, including insurance companies.[127]

The first serious initiative for regulating sustainable corporate governance emerged within the European Commission after the publication of the Ernst & Young Study on Director's Duties and Sustainable Corporate Governance in 2020. Despite numerous criticisms, based on this study, the European Commission adopted the Proposal for a Directive on Corporate Sustainability Due Diligence in February 2022.[128] The directive was confirmed by the EU Council on April 24, 2024, and was finally published in July 2024, achieving a political agreement in this important business area and concluding the lengthy, turbulent, and at times uncertain (even dramatic) process of adopting this document.[129] The directive has extremely valuable objectives reflected in more responsible, long-term, sustainable business practices for corporate entities. It harmonizes the duty of sustainable business conduct and establishes a link with conduct standards, breach of which leads to various administrative and civil penalties. This is of particular importance for insurance companies, as they (like reinsurance companies) are explicitly covered by its provisions.[130]

Furthermore, ESG (Environmental, Social, and Governance) factors have been an integral part of insurance companies' operations for years, primarily in their risk management, but also in their impact on corporate governance. These factors significantly influence decisions made by insurance companies and point to the

[124] *Ibid*., 5, 70–73.

[125] Arthur van den Hurk, *The Role of Prudential Regulation and Supervision of Insurers in Sustainable Finance*, *Sustainable Finance in Europe: Corporate Governance, Financial Stability and Financial Markets* (eds. Danny Busch, Guido Ferrarini, Seraina Grünewald), Second Edition, Palgrave Macmillan, Cham, 2024, 375.

[126] EU High-Level Expert Group on Sustainable Finance, 39.

[127] More about these initiatives, see A. van den Hurk, 379.

[128] A detailed and critical examination of its proposed, later rejected provisions aimed at harmonizing the duty of diligence for directors, with a review of previous initiatives, see Milena Mitrović, *Duties of Directors in Sustainable Corporate Governance*, *Law and Economy*, No. 3/2023, 847–852, 856–866.

[129] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, OJ L 2024/1760, 5 July 2024.

[130] Art. 3, Section 1, Subsection a), Paragraphs 5 and 6 of the Directive on Corporate Sustainability Due Diligence.

desired direction in their governance. Turning towards these objectives is key for specific stakeholder groups, including investors and shareholders of all companies.[131] It is becoming an increasingly important element in defining the goals of long-term and sustainable business for insurance companies.

Until recently, special attention had not been paid to sustainable corporate governance in the legal system of the Republic of Serbia. However, under the global influence of principles and standards for sustainable business, particularly influenced by EU law and comparative law, these principles and standards are now already a significant part of the operations of insurance companies in Serbia. Recently, they have become the most important aspects of corporate governance here as well.

Up to this point, the duties of insurance companies to operate in compliance with the law, general acts, business policy acts, insurance and actuarial standards, as well as with good business practices and business ethics in the best interest of the insurance company and its shareholders, have been discussed.[132] Given all that has been said earlier about the specific goals and interests of insurance companies, and under the influence of modern views on sustainable corporate governance, although not explicitly stated, *the duty of the insurance company should undoubtedly be understood to include principles and standards of environmentally and socially responsible business practices*.

Today, more than ever, the supervisory duty of board members to oversee the implementation of increasingly complex operational rules, governance systems, and controls is more challenging than ever. On the other hand, traditional decision-making focused solely on generating profit and the short-term interests of the company's shareholders is being relativized. Authors point out that directors, faced with numerous demands for adhering to many rules and standards in contemporary sustainable business, are less protected by the traditional rule of business decision-making.[133] Therefore, the future of this area lies in the development of modern rules of sustainable corporate governance and their further integration into the management of insurance companies.

In comparative law, serious discussions have emerged regarding the qualification of directors (and board members in general). In this regard, the discussion on further specifying and improving the *fit and proper* rules is especially interesting. It is increasingly questioned how it is possible to ensure that these individuals properly assess and prevent not only business but also numerous other risks. These, for example, relate to climate change, environmental protection, data protection, the

[131] Thilo Kuntz, *Introduction to Research Handbook on Environmental, Social and Corporate Governance*, *Research Handbook on Environmental, Social and Corporate Governance* (ed. Thilo Kuntz), Edward Elgar Publishing, Cheltenham, UK – Northampton, MA, USA, 2024, 4.

[132] See principles of business in Art. 19 of the Insurance Law.

[133] T. Kuntz (2024a), 68–69.

use of AI, etc. The High-Level Expert Group on Sustainable Finance has promoted the enhancement of the *fit and proper* test to ensure that members of the boards of financial sector companies possess sufficient knowledge and skills in sustainable business risks, particularly understanding long-term risks and sustainability risks, better knowledge of a multi-stakeholder approach, and the objectives of the corporate entity that takes into account numerous stakeholders, including those outside the insurance company, and ultimately, understanding the sustainability-related needs of clients.[134] This recommendation should be applied to domestic insurance companies, considering the standard that the Insurance Law defines when prescribing the conditions for appointing a member of the board of an insurance company. Namely, the requirement that a person has the appropriate qualifications, knowledge, and experience necessary for performing this function should include those related to sustainability. However, it would be desirable for such requirements to be further specified in order to promote and improve sustainable business practices in domestic insurance companies.

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[134] Report of the High-Level Expert Group on Sustainable Finance, 39.

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